IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FISHER-ROSEMOUNT SYSTEMS, INC. and EMERSON PROCESS MANAGEMENT LLLP, **Plaintiffs,** **vs.** **ABB LTD and ABB, INC.,** **Defendants.**	**Case No.** **JURY TRIAL DEMAND**

COMPLAINT FOR PATENT INFRINGEMENT

Fisher-Rosemount Systems, Inc. and Emerson Process Management LLLP (collectively "Emerson"), by and through their attorneys, for their complaint against ABB Ltd and ABB, Inc., (collectively "ABB") allege as follows:

NATURE OF THE ACTION

1. This is a patent infringement action arising out of ABB's introduction in the United States of a new "Select I/O" system and products it markets for use with its ABB "Ability 800xA" distributed control system. This case states actions for infringement against the products, systems and methods associated with ABB's Ability System 800xA with Select IO and xStream Engineering ("the Accused Products"), as further detailed below.

2. ABB's making, using, selling, offering to sell and/or importation of the Accused Products infringes one or more claims of U.S. Patent Nos. 8,332,567, 9,411,769, and 7,684,875 (collectively, "the Asserted Patents").

THE PARTIES

3. Plaintiff Fisher-Rosemount Systems, Inc. ("FRSI") is a corporation organized and existing under the laws of Delaware with a principal place of business at1100 W. Louis Henna Blvd., Bldg. 1, Round Rock, Texas, 78681. FRSI is a wholly-owned indirect subsidiary of Emerson Electric Co., a publicly traded Missouri corporation which serves as a holding company to several separate legal entities.

4. Plaintiff Emerson Process Management LLLP ("Process") is a limited liability limited partnership organized and existing under the laws of Delaware with a principal place of business at 1100 W. Louis Henna Blvd., Bldg. 1, Round Rock, Texas, 78681. FRSI owns a 94% limited partnership interest in Process; Rosemount, Inc., another indirect wholly-owned subsidiary of Emerson Electric Co., owns a 6% general partnership interest in Process. For purposes of this action, FRSI and Process are referred to herein collectively as "Emerson."

5. On information and belief, Defendant ABB Ltd is a foreign corporation organized under the laws of Switzerland with a principal place of business at Affolternstrasse 44, CH-8050 Zurich, Switzerland.

6. On information and belief Defendant ABB, Inc. is a Delaware corporation with a principal place of business at 12040 Regency Pkwy., Cary, North Carolina 27518.

7. On information and belief, Defendant ABB, Inc. is a wholly-owned subsidiary of ABB Ltd.

JURISDICTION AND VENUE

8. This is an action for patent infringement under the patent laws of the United States, which are codified at Title 35 of the United States Code.

9. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over the Defendants based on the business that ABB conducts and/or causes to be conducted in the State of Texas related to the Accused Products. On information and belief, the Accused Products are designed, engineered and manufactured by ABB Ltd and imported into the United States and the State of Texas, and/or made, used, sold or offered for sale in the United States and the State of Texas by or on behalf of ABB Ltd and ABB, Inc.

11. Venue is proper in this Court under 28 U.S.C. § 1400(b). Specifically, ABB Ltd is a foreign entity that has committed acts of infringement in this State, and, on information and belief, in this district. On information and belief, ABB, Inc. has committed acts of infringement in the Southern District of Texas and has regular and established places of business in the Southern District of Texas.

12. ABB maintains at least one regular and established place of business in the Southern District of Texas at its "Automation and Power Center" located at 3700 W. Sam Houston Pkwy. S., Houston, Texas 77042. The ABB Automation and Power Center is used by ABB "to showcase the solutions" ABB offers to "industry, transportation and infrastructure, and utility customers." On information and belief, ABB uses its Automation and Power Center to market and display its products, including the Ability System 800xA distributed control system and Select I/O system and products (further described herein).

FACTS

EMERSON'S CHARMs TECHNOLOGY

13. Emerson is a global leader in bringing technology and engineering together to provide innovative automated industrial control solutions for customers around the world.

14. Emerson helps businesses automate their production, processing and distribution in, for example, the chemical, oil and gas, refining, pulp and paper, power, water and wastewater treatment, mining and metals, food and beverage, life sciences and other industries.

15. Emerson is a leading provider of automated industrial control and process control solutions. One such solution offered by Emerson is a Distributed Control System known as DeltaV. DeltaV systems and products are designed, engineered and manufactured by FRSI, primarily at its principal place of business in Round Rock, Texas.

16. An integral part of DeltaV is Electronic Marshalling with CHARacterization **M**odules (CHARMs) technology. CHARMs technology and products enable Emerson to accommodate late changes in project design and deliver projects to customers on time and within budget.

17. From its first installation in 2010, Electronic Marshalling with CHARMs has now logged over ten billion hours of operation on its way to saving an estimated $500 million at over 1000 customer sites.

18. During design and construction, Electronic Marshalling with CHARMs condenses control room space requirements, eliminates multicore cables from field to control room, and reduces commissioning hours. This proven technology enables field wiring, connected on one end to field devices such as sensors, valves, motors, drives, RFID readers and other data-gathering and receiving devices, to be landed directly on the CHARMS terminal bases connected to a bus network and ultimately an I/O Card and Controllers, regardless of signal type or control strategy. Electronic Marshalling with CHARMs technology is one of the cornerstone technologies of Emerson's Project Certainty initiative targeted at improving capital project performance.

19. Electronic Marshalling with DeltaV allows field wires to be terminated on CHARMs terminal blocks, allowing any signal type to be landed on any channel, eliminating the need for cross-wiring and marshalling panels. The CHARMs modules process the data passing from and to the field device into a proprietary communication protocol used by the I/O Card which in turn converts I/O data into a proprietary communication protocol used by controllers in the DeltaV distributed control system. Each I/O channel is mapped to its appropriate controller electronically through the DeltaV system software.

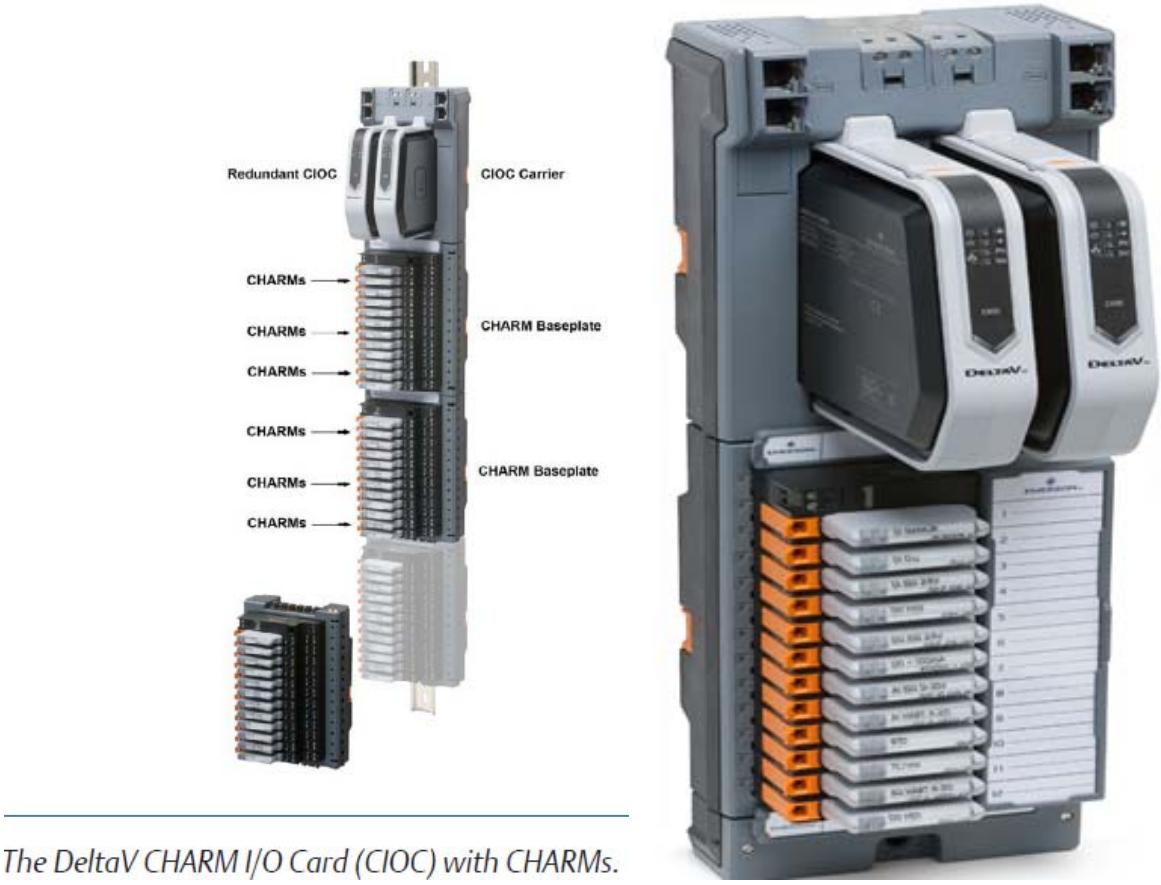
20. Electronic Marshalling with CHARMs allows hardware and software to be fully independent of each other from design to automatic loop commissioning. Electronic Marshalling replaces traditional marshalling and compresses project engineering schedules for “greenfield” (new) plants, “brownfield” (existing) migrations, and every day changes. Commissioning time is also reduced with Electronic Marshalling.

21. Emerson’s Electronic Marshalling technology, CHARMs, was developed, designed and engineered by FRSI over a period of several years.

22. Process sells and installs DeltaV systems with CHARMs in the United States.

23. Since its introduction, CHARMs has been praised by the process and industrial control industry. It is financially successful in its own right and is also a key driver of DeltaV control systems sales.

24. Two photos of typical CHARMs components are shown below:



The DeltaV CHARM I/O Card (CIOC) with CHARMs.

25. Multiple patents have issued relating to the CHARMs technology, including the Asserted Patents discussed below.

THE ASSERTED PATENTS

26. The United States Patent Office duly issued United States Patent Nos. 8,332,567 ("the '567 patent"), entitled "Apparatus and Methods to Communicatively Couple Field Devices to Controllers in a Process Control System" on December 11, 2012. The named inventors were Kent Allan Burr, Gary Keith Law, Doyle Eugene Broom, and Mark J. Nixon. A true and correct copy of the issued '567 patent is attached as Exhibit 1.

27. On December 7 and 8, 2006, the named inventors assigned all right, title and interest in U.S. Patent Application 11/533,259 filed September 19, 2006, which resulted in issuance of the '567 patent, to FRSI.

28. The United States Patent Office duly issued United States Patent No. 9,411,769 ("the '769 patent"), entitled "Apparatus and Methods to Communicatively Couple Field Devices to Controllers in a Process Control System" on August 9, 2016. The named inventors were Klaus Erni, Gary Keith Law, Doyle Eugene Broom, Kent Allan Burr, and Mark J. Nixon. A true and correct copy of the '769 patent is attached as Exhibit 2.

29. On October 15, 2014 and December 31, 2015, the named inventors assigned all right, title and interest in U.S. Patent Application 14/592,354, filed January 8, 2015, which resulted in issuance of the '769 patent, to FRSI.

30. The United States Patent Office duly issued United States Patent No. 7,684,875 ("the '875 patent"), entitled "Methods and Apparatus to Configure Process Control System Inputs and Outputs" on March 23, 2010. The named inventors were Larry Oscar Jundt, Kent Allan Burr, Gary Keith Law, William George Irwin, Marty James Lewis, Michael George Ott and Robert Burke Havekost. A true and correct copy of the '875 patent is attached as Exhibit 3.

31. On February 2, 2007, the named inventors assigned all right, title and interest in U.S. Patent Application 11/670,835, filed February 2, 2007, which resulted in issuance of the '875 patent, to FRSI.

32. The '567, '769 and '875 patents are referred to herein as the "Asserted Patents."

ABB's INFRINGING "SELECT I/O" PRODUCTS

33. ABB is a competitor of Emerson in the automated industrial and process control markets.

34. On information and belief, during 2016, ABB Ltd had revenue of approximately $33.8 billion and gross profit of approximately $9.7 billion. Its 2016 revenue attributable to its Process Automation Division was approximately $6.6 billion. In 2017, the Process Automation Division became the Industrial Automation Division.

35. ABB's competitive Distributed Control System is known as the "Ability System 800xA." According to ABB Ltd's 2016 SEC Form 20-F, ABB's Ability System 800xA "provides a scalable extended automation system for process and production control, safety, and production monitoring." ABB's sells its Process Automation products primarily through a direct sales force and secondarily through third-party channel partners such as distributors, system integrators and OEMs (Original Equipment Manufacturers). Also according to ABB Ltd's 2016 SEC Form 20-F, ABB's Process Automation division considers Emerson a principal competitor.

36. On or about approximately March 14, 2017, ABB announced in Houston, Texas, at an ABB Customer World Event, held at the George R. Brown Convention Center, the introduction of "Select I/O" as a "digital marshalling" solution and component of its Ability 800xA system. As part of the announcement, ABB issued a press release dated March 14, 2017, a copy of which is attached hereto as Exhibit 4.

37. On information and belief, representatives of both ABB Ltd and ABB, Inc. attended the tradeshow and displayed and offered to sell the Accused Products. The keynote speech introducing Select I/O was made on or about March 14, 2017. It was further the subject of another full presentation at the same event by an ABB representative. On information and belief, Select I/O was marketed, used and demonstrated at this event. Below is a photograph of the Select I/O product shown at the Customer World Event, which depicts at least several Signal Conditioning Modules ("SCM"), similar to CHARMs modules:

38. On information and belief, since at least the time of the ABB Customer World Event in Houston in March, 2017, the accused Select I/O products have been, and are presently being, designed, engineered, and manufactured by ABB outside the United States, imported into the United States by ABB, offered for sale in the United States and the Southern District of Texas, and sold in the United States and the Southern District of Texas.

39. Attached as Exhibit 5-7 are true and correct copies of marketing materials released by ABB in connection with or subsequent to the ABB Customer World Event.

40. According to ABB's marketing materials: "Select I/O is an Ethernet based single channel I/O solution for ABB Ability™ System 800xA that offers full redundancy down to the Signal Conditioning Module. Each signal coming from the field is conditioned individually with the Signal Conditioning Module (SCM) for both process and safety applications." The SCMs plugged into the base in the above photograph indicate that SCMs communicate using a plurality

of communication protocols, digital and analog, input and output. An example of an SCM is depicted here:

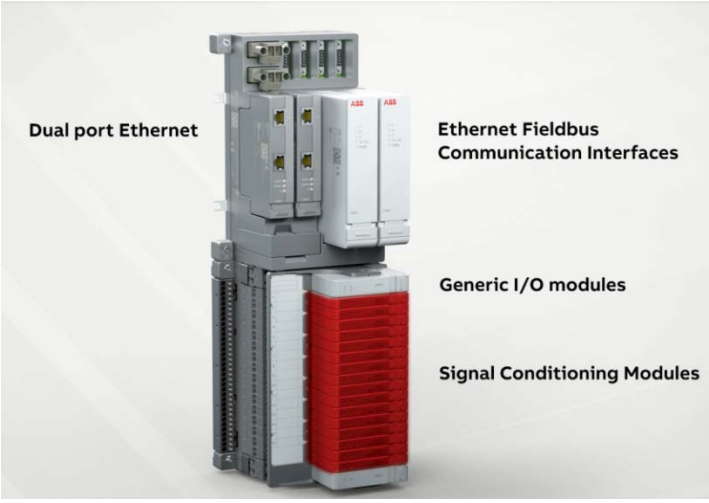
41. On information and belief, features of ABB's Select I/O System include:

- Hardware selectable I/O types
- Field disconnect mode (connected to system, but isolated from the field)
- Electronic current limitation and galvanically isolated (per channel)
- Line monitoring for all I/O types
- -40 to + 70 deg C temp. range
- Up to 192 SCM's per I/O cluster
- SIL3 certified safety modules (DI, DO, 3A DO, AI, AO)
- Single channel and multi-channel (S800) I/O in the same system
- Support for digital marshalling

42. On information and belief, ABB markets the Accused Products throughout the United States, including via its website at http://new.abb.com/control systems/system-800xa/800xa-dcs/hardware-controllers-io/select-i-o and http://new.abb.com/control-systems/system-800xa/the-future-of-project-execution/system-800xa-s-select-i-o-fundamentally-changes-automation-project-execution.

43. Attached as Exhibits 6 and 7 are true and correct copies of ABB's marketing materials on its website, describing and depicting the Accused Products.

44. On information and belief depicted here is an excerpt from a promotional video for ABB's Select I/O System which depicts Select I/O SCMs (in red) installed in connection with an I/O card configuration similar to Emerson's CHARMs technology:



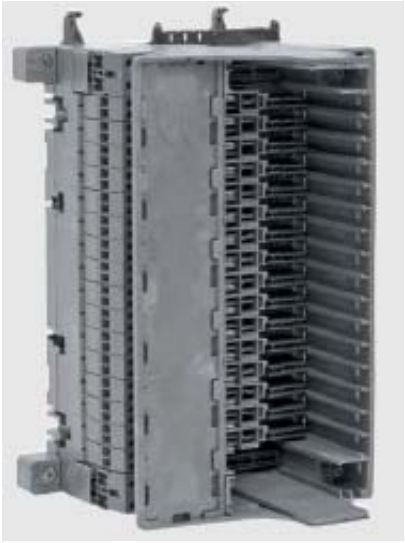
45. On information and belief, depicted here is an example of an ABB Select I/O System installed in a typical termination cabinet used in distributed control systems, showing field device wiring coming into terminals of the Select I/O SCMs:

46. On information and belief, ABB's Select I/O System uses bases into which SCM modules are inserted to connect the modules to the bases and a bus network and to the field

device interface. The bases can be connected to an I/O Card base or together with each other in a "daisy chain" structure. In either configuration, to marshal field device data to SCMs, I/O Cards and ultimately distributed control system controllers, the bases must utilize a bus, or otherwise connect to a bus, which bus connects the base to the distributed control system network.

47. On information and belief, depicted below is a photo of an empty Select I/O base to which field device wiring connects and to which SCMs are inserted to process field device data into a communication protocol used to communicate with the I/O Cards.

48. On information and belief, visible at the top of the empty Select I/O base is a means of connecting the base to other bases or an I/O Card base and connecting the base to the bus network of the distributed control system.



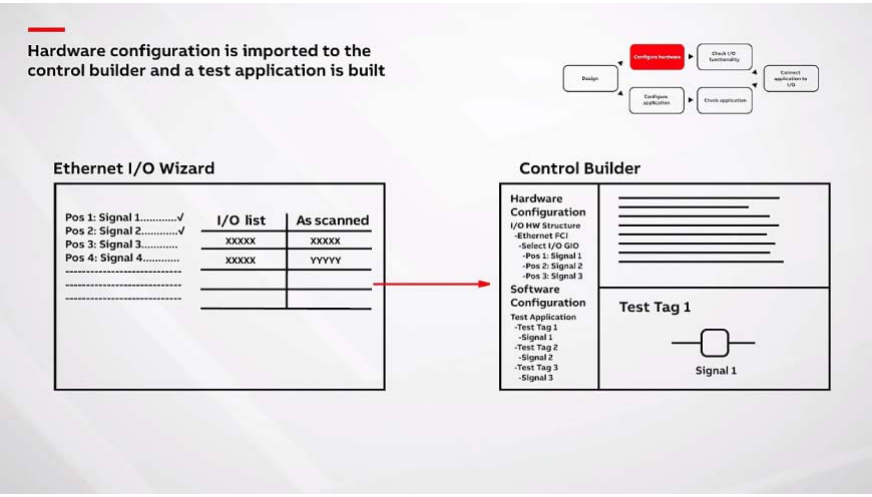
49. On information and belief, ABB's Select I/O System includes use of "xStream Engineering" software which enables automatic digital marshalling of field devices to SCMs in termination cabinets. According to ABB's Select I/O promotional materials, xStream Engineering has the following features and functionality:

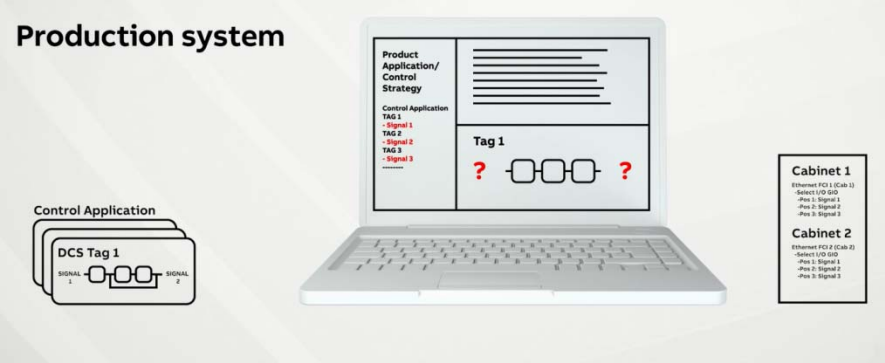
xStream Engineering

- Automatic scanning of Select I/O or S800 I/O connected to Ethernet FCI's (HART devices)
- Automatic configuration of I/O hardware structure in ABB Ability™ System 800xA's Control Builder
- Automatic configuration of the test application for early loop functionality testing
- Automatic digital marshalling of I/O to the control application (using signal names)
- Ability to use I/O list within the engineering environment.

50. On information and belief, HART is a standard communication protocol. With certain field devices, communications between field devices and I/O Cards can use either an analog 4-20mA communication protocol or an enhanced digital HART communication protocol.

51. On information and belief, ABB's xStream Engineering software uses "tags" to marshal I/O field devices to Select I/O SCMs, I/O Cards and ultimately distributed control system controllers. Such use of tags is demonstrated in these excerpts from an ABB promotional video:





COUNT I
Infringement of the '567 Patent

52. Emerson incorporates by reference the foregoing paragraphs 1-51 of the Complaint as though fully set forth herein.

53. ABB Ltd and ABB, Inc. have infringed, directly or indirectly, and continues to infringe, at least claim 1 of the '567 patent under 35 U.S.C. § 271, literally and/or under the doctrine of equivalents, making, using, selling, offering to sell, and/or importing the Accused Products.

54. Claim 1 of the '567 patent states:

1. An apparatus to communicatively couple field devices to a controller in a process control system, the apparatus comprising:

a base comprising:

a first physical interface to be communicatively coupled to different types of field devices and exchange communications with one or more of the field devices via a plurality of different communication protocols; and

a second physical interface to communicatively couple the base to a bus to communicate with the controller; and

a module removably attachable to the base and to communicate with the controller via the second physical interface of the base, the module comprising:

a connector to communicatively couple the module to the base; and

a processor to be in communication with the first physical interface and configured to encode first information from any of the different types of field devices for communication via the bus using a second communication protocol different from the plurality of different communication protocols.

55. On information and belief, supported by visual depictions of the Accused Products, ABB's representations in marketing and other materials as to how the Select I/O system and products work and their claimed functionality, and review of such visual depictions and marketing materials and claims, the Accused Select I/O product line infringes at least claim 1 of the '567 patent at least as follows:

a. Select I/O products are apparatuses for communicatively coupling field devices to a controller in process control system;

b. Select I/O products have a base with a first physical interface, including terminals to which field device wires are connected which communicatively couples the interface to the devices to exchange communications using a plurality of communication protocols;

c. Select I/O bases have a second physical interface which communicatively couples the base to a bus to communicate with a controller;

d. Select I/O products use SCM modules removably attachable to the base and to communicate with the controller via the second physical interface of the base;

e. Select I/O SCM modules have a connector to communicatively couple the module to the base, because to achieve ABB's claimed functionality its SCM modules

must connect communicatively to its Select I/O bases similar or identical to CHARMs bases;

f. Select I/O SCM modules have a processor to be in communication with the first physical interface and configured to encode first information from any of the different types of field devices for communication via the bus using a second communication protocol different from the plurality of different communication protocols, because on information and belief SCM modules process field device data into the I/O Card communication protocol; and

g. On information and belief, the precise manner in which Select I/O products infringe this claim of the '567 patent will be shown by discovery, source code review and examination and evaluation of a sample of Select I/O products, including but not limited to firmware and software.

56. ABB's acts of infringement have caused damage to Emerson, and Emerson is entitled to recover from ABB damages sustained as a result of ABB's infringement of the '567 patent.

57. ABB's acts of infringement of the '567 patent have caused, and will continue to cause, irreparable harm to Emerson. CHARMs technology is a key driver of sales of DeltaV distributed control systems. Hence, ABB's infringement has and will continue to result in lost sales of not only CHARMs technology products and services but also DeltaV distributed control system products and services.

COUNT II
Infringement of the '769 Patent

58. Emerson incorporates by reference the foregoing paragraphs 1-57 of the Complaint as though fully set forth herein.

59. ABB Ltd and ABB, Inc. have infringed, directly or indirectly, and continues to infringe, at least claim 1 of the '769 patent under 35 U.S.C. § 271, literally and/or under the doctrine of equivalents, making, using, selling, offering to sell, and/or importing the Accused Products.

60. Claim 1 of the '769 patent states:

An apparatus, comprising:

a base comprising:

a first physical interface to be communicatively coupled to one of a first field device in a process control system or a second field device in the process control system; and

a second physical interface to be communicatively coupled to a controller in the process control system via a bus; and

a module to be removably attached to the base, the module to communicate with the first field device using a first communication protocol when the first physical interface is communicatively coupled to the first field device, the module to communicate with the second field device using a second communication protocol different than the first communication protocol when the first physical interface is communicatively coupled to the second field device, the module to communicate with the controller via the bus using a third communication protocol, the third communication protocol different from the first and second communication protocols.

61. On information and belief, supported by visual depictions of the Accused Products, ABB's representations in marketing and other materials as to how the Select I/O system and products work and their claimed functionality, and review of such visual depictions

and marketing materials and claims, the Accused Select I/O product line infringes at least claim 1 of the ‘769 patent at least as follows:

a. Select I/O products have a base with a first physical interface, including terminals to which field device wires are connected which communicatively couples the interface to a first and second field device in an Ability 800xA process control system;

b. Select I/O products have a second physical interface to be communicatively coupled, by a bus, to a controller in an Ability 800xA process control system;

c. Select I/O products include SCM modules removably attached to the base to communicate with a first field device using a first communication protocol, such as 4-20mA, when the first physical interface is communicatively coupled to a first field device and to communicate with a second field device using a second communication protocol, such as digital HART, a different communication protocol from 4-20mA, when the first physical interface is communicatively coupled to a second field device;

d. Select I/O SCM modules communicate with the controller via the bus using a third communication protocol, such as a proprietary I/O Card protocol which is different from both 4-20mA and enhanced digital HART; and

e. On information and belief, the precise manner in which Select I/O products infringe this claim of the ‘769 patent will be shown by discovery, source code review and examination and evaluation of a sample of Select I/O products, including but not limited to firmware and software.

62. ABB's acts of infringement have caused damage to Emerson, and Emerson is entitled to recover from ABB damages sustained as a result of ABB's infringement of the '769 patent.

63. ABB's acts of infringement of the '769 patent have caused, and will continue to cause, irreparable harm to Emerson. CHARMs technology is a key driver of sales of DeltaV distributed control systems. Hence, ABB's infringement has and will continue to result in lost sales of not only CHARMs technology products and services but also DeltaV distributed control system products and services.

COUNT III
Infringement of the '875 Patent

64. Emerson incorporates by reference the foregoing paragraphs 1-63 of the Compliant as though fully set forth herein.

65. ABB Ltd and ABB, Inc. have infringed, directly or indirectly, and continues to infringe, at least claim 8 of the '875 patent under 35 U.S.C. § 271, literally and/or under the doctrine of equivalents, making, using, selling, offering to sell, and/or importing the Accused Products.

66. Claim 8 of the '875 patent states:

A method comprising:

communicatively coupling a process control device to a channel of a multi-channel input/output port of a process controller via an input/output device;

obtaining a tag for the process control device from the input/output device, wherein obtaining the tag for the process control device from the input/output device comprises directing an input/output gateway to sense whether the input/output

device is present, the input/output gateway to read the tag from the input/output device when the input/output device is present;

querying based on the tag obtained from the input/output device a database of process control routines implemented by the process controller to identify a process control routine, the process control routine to control the process control device within a process plant; and

communicatively coupling the identified process control routine to the channel of the multi-channel input/output port based on the database query.

67. On information and belief, supported by visual depictions of the Accused Products, ABB's representations in marketing and other materials as to how the Select I/O system and products work and their claimed functionality, and review of such visual depictions and marketing materials and claims, the Accused Select I/O product line infringes at least claim 8 of the '875 patent at least as follows:

a. Select I/O products communicatively couples a process control device, such as a field device, to a channel of a multi-channel input/output port of a process controller via an input/output device;

b. Select I/O products used in conjunction with ABB's xStream Engineering software automatically and digitally marshals input/output devices to the I/O Card and controller of a process control system;

c. Select I/O products used in conjunction with ABB's xStream Engineering software carry out automatic digital marshalling by obtaining a tag for a process control device from the input/output device by sensing its presence and reading its identification tag;

d. On information and belief, Select I/O products used in conjunction with ABB's xStream Engineering software use a gateway to sense the presence of an input/output device and read its identification tag;

e. Select I/O products used in conjunction with ABB's xStream Engineering software carry out automatic digital marshalling by querying, based on the input/output device's tag, a database of process control routines implemented by the controller to control the input/output device;

f. Select I/O products used in conjunction with ABB's xStream Engineering software carry out automatic digital marshalling by communicatively coupling the identified process control routine to the channel of the multi-channel input/output port based on the database inquiry; and

g. On information and belief, the precise manner in which Select I/O products used in conjunction with ABB's xStream Engineering software infringe this claim of the '875 patent will be shown by discovery, source code review and examination and evaluation of a sample of Select I/O products and ABB's xStream Engineering software, including but not limited to firmware and software.

68. ABB's acts of infringement have caused damage to Emerson, and Emerson is entitled to recover from ABB damages sustained as a result of ABB's infringement of the '875 patent.

69. ABB's acts of infringement of the '875 patent have caused, and will continue to cause, irreparable harm to Emerson. CHARMs technology is a key driver of sales of DeltaV distributed control systems. Hence, ABB's infringement has and will continue to result in lost

sales of not only CHARMs technology products and services but also DeltaV distributed control system products and services.

PRAYER FOR RELIEF

WHEREFORE, Emerson respectfully requests that the Court enter judgment in its favor, granting the following relief:

A. Entry of a judgment that ABB has infringed each of the Asserted Patents;

B. Entry of a preliminary and permanent injunction enjoining ABB and its officers, directors, employees, agents, consultants, contractors, suppliers, distributors, and all others acting in privity with ABB from further infringement of the Asserted Patents;

C. Entry of a judgment that ABB's infringement of the Asserted Patents has been and continues to be willful;

D. Entry of an award to Emerson of damages adequate to compensate it for the infringement of the Asserted Patents by ABB, in an amount to be proven at trial, together with pre-judgment and post-judgment interest and costs, as fixed by the Court;

E. Trebling the damages due to ABB's willful infringement under 35 U.S.C. § 284;

F. Entry of a finding that, with respect to ABB, this case has been exceptional and awarding to Emerson its reasonable costs and attorney fees under 35 U.S.C. § 285;

G. Entry of an award to Emerson of its costs in this action; and

H. A grant to Emerson of such further relief that the Court deems just.

JURY DEMAND

Plaintiffs demand a jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: January 22, 2018

Respectfully submitted

/s/ *Thomas H. Watkins*
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